United States Court of Appeals

for the Second Circuit

APPELLANT'S BRIEF

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

76-6174

CLARYCE K GREENE

V

COMMISSIONER OF INTERNAL REVENUE

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DOCKET#76-6174 PRO SE

CONTINUED

ON APPEAL FROM AN ORDER OF THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK.

PETITION OF APPELLANT FOR REVERSAL OF PREMATURE AND FALSE VERDICTS

Appellant's Brief

APPELLANT- PRO SE

APPELLEE-U.S.ATTORNEY

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By submission only -
6/2/77

C. K. Greene

1st segment

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TO THE HONORABLE JUDGES OF THE UNITED STATES COURT OF APPELAS

FOR THE SECOND CIRCUIT

STATEMENT

The appellant, who is acting pro se, begs the forbearance of the judges in this court who will sit in judgement of this matter, to be indulgent and patient in the reading of the submitted papers and in the consideration for the reversal of premature and false verdicts, since the presentation has not been prepared by a lawyer and does not contain the finesse of an accomplished legal mind.

The appellant has researched her material carefully and has attempted to present it in a simple straight foward manner, secure in her knowledge that she was exploited by the lower court and thwarted at every turn in her endeavors to retrieve money seized through wrongdoing, lawlessness and violation of rights.

The appellant is particularly eager for the camouflage of the lower court to be penetrated, that it be held responsible for everything submitted to it for adjudication to protect the rights of litigants for redress, that it be held responsible for the preservation of rights for everyone who comes within its orbit.

This is to be remembered Rule 1 6300A Reg- IRS-"An exaction by the US government which is not based in law, statutory or otherwise is the taking of property without due processor law in violation of the fifth amendment to the United States Constitution"

Despite all the sanctimonious talk of no one being above the law and the strict adherence to the constitution, the Internal Revenue Service is openly permitted to violate the constitution, abusing it abundantly judging from the activity in this matter and the volume of cases in the various courts of the United States.

This appeal is planned in two segments, the first segment confined to the abuse of due process leading to premature and false verdicts, thus rendering them void legally and the second segment, held in abeyance with the court's indulgence pending the adjudication of the first segment, confined to judicial errors in fact and law and the corruption by the defendant leading to false, erroneous verdicts.

The appellant who is a woman acting pro se looks to this court to protect her rights against contemplated, calculated technical dismissals, against bias and discrimination, against malicious lawlessness upon which the United States Attorney General frowns, against incompetent self serving government lawyers, against the violation of her Constitutional, Civil and Human rights.

The appellant looks to this court to right wrong, to penetrate the coverups manipulated to defeat the proper administration of justice in this refund action as manifested by apparent collusion, slanted favor, obstruction of justice and certain perjury.

This can assuredly be deduced from instant technical dismissals suffered by the appellant at the slightest pretext or an excuse for one and the wink enjoyed by the defendant with out of time answers, no answers to avoid defense and other malpractices perpetrated against the appellant.

If justice is what justice is supposed to be, then the appellant will prevail which she intends to do.

Government lawyers bask in the sun with copious rich rhetoric, unsubstantiated, hoodwink courts with irrelevant laws, in their presentations, give fraudulent misleading information to induce dismissals and exploit pro se litigants' ignorance with the law concerning burden of proof as it relates to tax cases.

It is well established that the burden of proof in civil actions is upon the taxpayer but reverses when a finding has been made of erroneous, excessive assessments resulting in illegal seizures and proven by the redress of a refund.

The burden of proof is upon the defendant in such circumstances but this seems to have conveniently slipped the mind of the defendant in the same manner that the data of paid taxes and other court statuses slipped the mind with the deliberate/malicious attempt to shift the entire burden of proof upon the appellant, lawlessly.

The defendant since the initiation of the case in the lower court engaged in a course of action to damage the appellant by false, misleading, reckless, willfull, malicious presentations to the court to induce dismissals of her claims to refunds for the years at issue.

The defendants' omissions and procedural flaws without an iota of substantive documentary evidence to disprove the appellant's contentions are sufficient argument to verify them.

In conclusion, the appellant realizes the burden a court must assume to protect all litigants and thanks the court in advance for its indulgence.

Judge Cooper refused to dismiss the matter when the defendant failed to disprove her claims, which still holds. Judge Stewart should have done no less.

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STEP BY STEP ACCOUNT LEADING TO PREMATURE AND FALSE VERDICTS

On 9/20/74 by court order a motion to supplement and amend pleadings with new evidence was submitted to the court to be determined by submission only.

On 1/15/75 a letter was sent to the court reminding it of this outstanding motion.

On 1/28/75 though the above motion had not as yet been adjudicated the appellant was ordered to a pre trial conference on 2/27/75 with the threat of dismissal, if she failed to appear for this.

On 2/8/76 a letter was sent to the court questioning this threatening and intimidating treatment in light of the unadjudicated motion still before the court, by court order.

On 2/27/75 the appellant was ordered to an immediate trial, which was later postponed to 3/6/75 by protest. No minutes were taken, no time given for thought and preparation for a trial and no foundation laid out for it.

On 3/3/75 official and written ojection to the premature and forced pre trial conference which is discretionary and not mandatory under law was submitted.

On 3/3/75 a motion for summary judgement containing new evidence was submitted to the court for determination by submission only.

On 3/6/75 the appellant appeared at the trial and submitted official written objection to the out of order, premature forced trial- outstanding motions before the court having not as yet been officially adjudicated or docketed as substantiated with the docket sheet

of the case, thereby depriving her of the opportunity to prosecute her case in orderly, judicial manner.

On 3/6/75 a forced, premature, aborted trial took place, despite objection to it, despite no foundation, despite no apprising of legal and civil rights, despite outstanding motions, despite no jury of peers.

The ignored objection was followed by an inquiry regarding paid taxes and when this was affirmed the appellant was ordered sworn in against her wishes in violation of her rights.

Had the judge done his homework with the motion to amend and supplement pleadings and the motion for summary judgment with the new evidence and appendices and had adjudicated them prior to the trial, he would have known the taxes were paid for the years at issue-1959, 1962, 1963, 1964, 1966, 1967 and the proper standing of the appellant, contained in these motions, let alone possibly obviating a trial.

On 3/6/75 the judge would have known this information had he used the pre trial conference for what it was intended, albeit the appellant's objection to it, for legal reasons.

On 3/6/75 the judge questioned the government lawyer about his failure in not having the data regarding paid taxes for the trial. This too could have been resolved at the pre trial conference in addition to requested data about adjudicated statuses in the Tax Court and Court of Appeals.

This government lawyer should have had this information since this was just as available to him, more so, than it was to the appellant. The failure to submit favorable evidence in the motion to amend and supplement pleadings, the failure to respond to the summary judgement, the failure to submit favorable information at the trial regarding paid taxes and other court statuses were deliberate and malicious

omissions intended only for contemplated and calculated dismissals.

On 3/6/75 this mock trial with nothing of substance accomplished was suddenly terminated with the"I think we perhaps have gone as far as we should this afternoon" without adjourning it for proper and further adjudication for refund, under oath and with opportunity for cross examination. This was a grave error and violated rights to a fair trial.

This sudden termination followed the discovery of perjury in the defendants witness with appellant's evidence submitted to the court and the questioning of the witness by the judge, with tacit acceptance by him.

On 7/28/75 the appellant submitted a letter to the judge's office in opposition to a copy of a letter received from the defendant dated 7/9/75 and received a few days prior to 7/28/75, demanding technical dismissal.

On 7/28/75 the appellant was advised the case had been dismissed 7/11/75. Since the appellant had no notice of this a copy was obtained for her.

This was flagrant abuse of due process by the defendant in withholding a letter dated 7/9/75 demanding dismissal which should have been submitted by motion until a few days prior to 7/28/75 which deprived the appellant of orderly judicial redress, an old trick used by unethical lawyers to induce dismissals, having been thwarted in this by a lying witness and saved by an aborted, biased trial with a back door.

Judge Stewart committed a grave error in not offering the appellant the apportunity to respond to an erroneous letter and dismissing the case on a trumped up technicality, which demand for dismissal should have been brought on by motion and handled in an orderly judicial manner, especially after not rendering a decision for more than four months after the unfair trial and then relying on a fraudulent letter to issue one immediately, with as yet an unfinished trial.

On 9/29/75 Judge Stewart denied consideration of his decision.

On 10/28/75 a motion to vacate premature and false verdicts of 7/11/75 and 9/29/75 was submitted to the court.

On 12/8/75 a search was initiated to locate this motion which Judge Stewart contended he did not receive though the pro se clerk stated this had been processed in traditional manner.

On 3/9/76 a copy of this motion was submitted to Judge Stewart's office since it could not be located, despite his discouragement.

On 9/20/76 the appellant received the denial of this motion from which an appeal was taken, almost a year after the motion to vacate the premature and false verdicts of 7/11/75 and 9/29/75 was submitted, and exactly two years after submitting the motion to amend and supplement pleadings on 9/20/74, under the Court's liberal spirit.

The preceding steps show how premature and false verdicts were reached in violation of the appellant's rights to due process, to truth, to constructive thinking, to justice.

The preceding steps show that any verdicts reached by reason of them must be false and void and have no legal standing.

They must by reason of this be reversed.

Should the court deem there were no improper steps in reaching the premature verdicts, let alone judicial erroneous ones, then the appellant reserves the right to prosecute the appeal to reverse false verdicts based upon judicial errors, corruption by the defendant during the entire life of the matter and the violation of Constitutional, Civil and Human rights.

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OTHER REASONS TO SUPPORT THE REVERSAL OF PREMATURE AND FALSE VERDICTS

The appellant has presented the legal reasons, abuse of due process-abuse of power, to reverse the premature and false verdicts but the most important reason to do this transcends law.

This is deliberate and malicious cruelty to human beings, let alone other living creatures.

The Internal Revenue Service which operates outside the Constitution abused this privilege by engaging in a persistant pattern of official misconduct and lawlessness especially in the 1959 and 1962 years through its agents and lawyers causing irreparable financial deprivation by seizing money not due it, especially during the week of a death in the family, as determined later by the finding of an erroneous excessive assessment with the resultant return of close to $1000.00 reversing burden of proof-by the invasion of the appellant's family and her privacy in an unlawful fishing expedition for money not due it-by humiliating the appellant in her office for money not due it-by the criminal act of substituting an absentee, unauthorized audit for a bona fide personal audit to unlawfully assess her and defraud her for money not due it and which was partially returned by official complaint, though by reason of the unlawful intent and perpetration should have been fully returned and which is still in litigation, let alone never having been proven to be due. by the covering up of unlawful acts and perjury the latter as recently as the aborted and unfinished trial on 3/6/75 where the IRS agent was caught in lies, which was condoned and completely ignored to the detriment of the appellant.

The trial was in the truest tradition of a kangaroo one-without a lawyer, jury, impartial judge, proper protective procedure, diligent care.

If the philosophy and administration of law can be considered a trilogy of truth, justice and constructive thinking with all due speed for perpetuation, then this has been violated at every turn since the initation of this matter in the lower court.

Answers have been submitted out of time or never submitted and when submitted including verdicts have been a travesty on justice.

The motion of 9/20/74 has still not been officially adjudicated and docketed.

The motion of 3/3/75 has still not been officially adjudicated and docketed.

The out of order, objected to, forced trial of 3/6/75 was decided 7/11/75, with a still unfinished trial and by a lawless, fraudulent letter.

The motion of 10/28/75 did not produce a decision until 9/20/76 almost a year after submission.

Waiting two years from 9/20/74 to 9/20/76 is certainly not justice with all due speed, with an unfinished unfair trial, considering the marvelous facilities available.

This alone should warrant reversal and summary judgement, let alone threats and intimidation, because it is contrary to policy.

If perjury under oath as established by the IRS agent is wrong, if lawless acts and coverup by agents are wrong as verified by the forced return of close to $1000.00 with the finding of erroneous, excessive assessment, at least one

This too should warrant reversal and summary judgement. then

The appellant has attempted in this first segment to only present the procedural flaws leading to premature verdicts rendering them void by reason of this.

The verdicts rendered 7/11/75 and 9/29/75 contain numerous judical errors in law and fact but since they emanate from procedural flaws, must be considered null and void, and not proper for comment now.

Should the court decide there were no procedural flaws, abuse of process in reaching these verdicts, then the appellant reserves the right to prosecute the appeal on these judicial errors, corruption by the defendant and other irregularities inherent in the matter before the court for reconsideration.

At that time the appellant will attempt to show the hoax perpetrated by the defendant upon the court and her and erroneous verdicts issued by reason of this.

As stated previously, the appellant intends to excerise her rights to the fullest and retrieve her money taken lawlessly by the IRS by abuse, reprehensible treatment in violation of civil and human rights.

The appellant explored the file prior to transfer to the Court of appeals. These are relevant to the matter at issue now-they are in the file.
The motion to amend and supplement pleadings -9/20/74
The letter of 1/28/75 threatening dismissal to appellant if she did not appear for the pre trial conference, on 2/27/75.
Objection to pre trial conference 3/3/75.
Motion for summary judgement with appendices for each year to uphold appellant's claims 3/3/75
Objection to trial 3/6/75
Transcript of trial verifying submission of the objection in writing prior its forced commencement 3/6/75

It is to be noted that errors in law and fact other than those pertaining to the premature verdicts will not be presented at this time.

The appellant cannot resist the temptation to commment upon the government law yer whopresided at the trial.

At the trial, he neither challenged or objected to the appellant's verified disclosure of his witness's perjury under oath. Neither did he have the guts to ask for dismissal with a lying witness and the evidence submitted by the appellant, yet it seems apparant in retrospect that the defendant having induced the pre trial conference and the trial planned to do this out was thwarted by circumstances.

Failing this, he waited more than four months when the trial had dimmed and became foggy to ask for dismissal through the back door with a closed letter of 7/9/75 rather than an open motion, depriving the appellant of her rights to forthright and ethical procedure. This letter was dated 7/9/75, the dismissal was docketed 7/14/75 and the appellant did not know about it until 7/28/75.

One cannot honestly say that this was in the highest tradition of the legal profession or in the droit of noble justice.

The appellant also cannot resist the temptation to aver that immediate protests to the chief judge's office, the U.S. attorney's office and later to Judge Stewart's office after the outrageous forced pre trial conference of 2/27/75 would certainly belie Judge Stewart's erroneous imaginary comments in his final decisions which are not being dealt with at this time pending adjudication of the procedural flaws which led to premature verdicts rendering them null and void.

In conclusion, the appellant wants to set the record straight regarding the Tax Court and the Court of Appeals previous adjudications.

She has in her hand a judicial decree from the Tax Court granting her motion to withdraw the 1966 and 1967 year's petition from it.

She has in her hand a judicial decree from the Court of Appeals, 2nd Circuit adjourning the 1963 and 1964 years pending the outcome of these years in the District Court, which have still not been adjudicated.

The Tax Court did not audit the 1963 and 1964 years at any time because the appellant terminated the prosecution upon learning the Tax Court was not primarily a court to act on wrongdoing and violation of rights, which was the reason for bringing these years into the Tax Court, in the hope wrong would be righted.

These two judicial decrees were available at the pre trial conference and at the trial and had both these events been used properly, this information would have been known immediately, by the judge. without bias

All this information including the appellant's assertions of wrongdoing by the defendant in the years at issue are a matter of public record and should have been known by the government lawyer and deterred him from sending his/letter of 7/9/75 in violation of the appellant's rights, having failed in his overzealousness to induce a dismissal at the trial with a lying witness, and the appellant's evidence to support her claims. erroneous albeit

Respectfully submitted.

6/2/77

L K Steen